

**Dover Municipal Landfill Superfund Site  
Second Consent Decree for RD/RA**

Civil Action No. 1:92-cv-406-M

**APPENDIX G**

**Draft Easement**

**Dover Municipal Landfill Superfund Site RD/RA Amended Consent Decree  
Civil Action No. 1:92-CV-406-M**

**APPENDIX G**

**DECLARATION OF ACTIVITY AND USE RESTRICTIONS**

Site: Dover Municipal Landfill Superfund Site  
Dover, New Hampshire  
Tax Map \_\_, Lot \_\_

NHDES Site No.: \_\_\_\_\_

This Declaration of Activity and Use Restriction ("Declaration") is made on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, together with its successors and assigns (collectively "Owner").

The Owner grants to the State of New Hampshire and EPA, as a third-party beneficiary, the right to enforce the restrictions set forth in this Declaration.

**WITNESSETH**

**WHEREAS**, in conjunction with a Consent Decree executed by a number of parties, the United States on behalf of the U.S. Environmental Protection Agency ("EPA") brought a lawsuit, Civil Action No. 1:92-CV-406-M, in the United States District Court for the District of New Hampshire under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601-9675, and the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973, seeking the cleanup of the Dover Municipal Landfill Superfund Site (the "Site") in Dover, New Hampshire.

**WHEREAS**, the State of New Hampshire (the "State") also filed a complaint raising claims under CERCLA, RCRA, and the State of New Hampshire Hazardous Waste Management Act, New Hampshire RSA Chapter 147-A, and joining in the Consent Decree.

**WHEREAS**, the original remedy for the Site, set forth in the September 10, 1991 Record of Decision ("1991 ROD"), requires source control (through consolidation of contaminated sediment and capping of the landfill, and construction and operation of a groundwater leachate diversion/interceptor trench) and management of migration (through extraction and treatment of groundwater contamination in the Southern Plume and natural attenuation of groundwater contamination in the Eastern Plume).

**WHEREAS**, an Amended Record of Decision, issued on September 30, 2004 ("2004 AROD"), amends the source control portion of the selected remedy but does not change the remedy for management of migration of groundwater in the Eastern or Southern Plumes (the 2004 AROD provides for, inter alia, construction and operation of an air sparging trench with a contingency for implementation of the 1991 ROD's source control remedy).

**WHEREAS**, the 2004 AROD requires that institutional controls protect the integrity of the remedy and prevent the use of contaminated groundwater at the Site.

**WHEREAS**, \_\_\_\_\_ is the owner in fee simple of a portion of the Site, consisting of a parcel of land situated at \_\_\_\_\_ in Dover, New Hampshire, identified respectively as Tax Map \_\_, Lot \_\_, recorded respectively at the Strafford County, New Hampshire Registry of Deeds at Book \_\_\_\_\_, Page \_\_\_\_\_, which are more particularly bounded and described in Exhibit A, attached hereto and made a part hereof, and which are depicted in Exhibit B, attached hereto and made a party hereof (the "Property").

**WHEREAS**, the Owner agrees, and intends by this document, to restrict activity and use of the Property as set forth herein, and to have all such restrictions run with the land and be binding upon Owner's heirs, successors and assigns.

**WHEREAS**, the Owner also agrees, and intends by this document, to grant to the State of New Hampshire the right to enforce such restrictions, and to have that grant secured by the lien filed \_[date]\_\_\_\_\_ by the State. This grant will also provide the State and EPA access to the Property to implement the remedy set forth in the 2004 AROD or subsequent remedy selection document(s) (hereinafter "Selected Remedy") and will permit the State and EPA, as a third-party beneficiary, the right to enforce the terms of the grant in order to protect any components of the Selected Remedy on the Property and to protect human health and the environment by reducing the risk of exposure to contaminants.

**WHEREAS**, the State, acting by and through the Department of Environmental Services ("NHDES"), and EPA have reviewed and approved this Declaration,

**NOW, THEREFORE**, the Owner declares, and notice is hereby given, that the Activity and Use Restrictions ("AUR") set forth below apply to the Property:

1. **Permitted Activities and Uses.**

All activities required by EPA, after consultation with the State, to meet the requirements of the Selected Remedy and any associated Statement of Work are specifically permitted.

Following completion of source control activities, the following activities may occur at the Site:

- (a) Any otherwise allowed activity involving the use of the surface of the Property;
- (b) Groundwater remediation activities as required by EPA under the Selected Remedy, including, but not limited to, any required treatment of deeper soils and on-site pumping and treating of groundwater; and
- (c) Such other activities and uses, as requested by Owner, which, in the opinion of EPA, with the concurrence of NHDES, shall present no greater risk or harm to human health, safety, or welfare, or to the environment,

than the permitted activities and uses set forth herein.

2. **Restricted Activities and Uses.**

All activities and uses that, if implemented at the Site, may result in a significant risk of harm to human health, safety, or welfare, or to the environment, or present a substantial hazard, are prohibited as follows:

- (a) Use of the Property as a residence, school, nursery, or recreational areas (such as parks or athletic fields) prior to the time source control measures have been completed in accordance with the Selected Remedy;
- (b) Any activity including, but not limited to, relocation of contaminated soil unless such activity is first evaluated and approved by EPA and NHDES; and
- (c) Installation of groundwater wells, or any removal or exposure to groundwater (except for remediation purposes), unless such activity is first evaluated and approved by EPA and NHDES.

3. **Proposed Changes in Activities and Uses.**

The restricted activities and uses set forth above may be amended or modified upon mutual agreement by the Owner, the NHDES and EPA. Any proposed changes in activities and uses at the Property that may result in a greater risk of exposure to contaminated media than currently exists at the Property shall be evaluated by the NHDES and EPA as to whether the proposed changes will present an unacceptable level of risk to human health and the environment. Approval by the NHDES and EPA shall be required before such proposed activity or use is commenced.

4. **Duration of Activity and Use Restrictions.**

The activity and use restrictions set forth herein shall run with the land, and, pursuant to New Hampshire RSA 147-A:14-a and 147-B:10-b (2005), and for the benefit of public health, safety, welfare, and environment of the State, the restrictions shall become binding upon the Owner of the Property or portions of the Property and shall remain in effect until the groundwater contamination at the Property meets the applicable state and federal standards for any restricted activity or use. These restrictions and easements shall be deemed to constitute conservation restrictions pursuant to RSA 477:45 through 47 (2001), and shall be enforceable by the State.

5. **Termination of Activity and Use Restrictions.**

The activity and use restrictions set forth herein may be terminated upon mutual agreement by the Owner, the NHDES and EPA and upon a showing that these restrictions are no longer necessary to maintain the protection of human health

and the environment.

6. **Recordation.**

This Declaration of Activity and Use Restriction, any modifications or amendments, and any terminations, are effective upon recordation of notice in the chain of title for the Property at the Strafford County, New Hampshire, Registry of Deeds. All recordation costs shall be the responsibility of the Owner. The Owner shall provide certified copies of all AUR recorded instruments to NHDES and EPA within 60 days of recordation.

7. **Incorporation Into Deeds, Mortgages, Leases, and Instruments of Transfer.**

This Declaration of Activity and Use Restriction shall be incorporated either in full, or by reference into the chain of title in all deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer, whereby an interest in and/or a right to use the Property or a portion thereof is conveyed. The notice in such instrument shall be substantially in the following form:

**NOTICE: THE INTEREST CONVEYED HEREBY IS  
SUBJECT TO AN ACTIVITY AND USE RESTRICTION,  
DATED \_\_\_\_\_, 20\_\_, RECORDED IN THE  
PUBLIC LAND RECORDS DATED \_\_\_\_\_, 20\_\_,  
AND RECORDED IN BOOK \_\_\_\_\_, PAGES \_\_\_\_\_ OF THE  
STRAFFORD COUNTY LAND RECORDS.**

8. **Notices.**

Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

**To Property Owner:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**To New Hampshire Department of Environmental Services:**

Dover Municipal Landfill Superfund Site State Project Coordinator  
New Hampshire Department of Environmental Services  
P. O. Box 95, 29 Hazen Drive  
Concord, NH 03302-0095  
(603) 271-3503

**To United States Environmental Protection Agency:**

Dover Municipal Landfill Superfund Site Remedial Project Manager  
United States Environmental Protection Agency, Region 1  
One Congress Street, Suite 1100, MC HBO  
Boston, MA 02114-2023  
(617) 918-1394

The Owner hereby authorizes and consents to the filing and recordation of this Notice, which shall become effective upon approval of NHDES and EPA and recordation of this instrument at the Strafford County, New Hampshire Registry of Deeds in the chain of Title for the Property.

**WITNESSETH** the execution hereof this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

For: \_\_\_\_\_  
Owner/Grantor

THE STATE OF NEW HAMPSHIRE \_\_\_\_\_, SS.

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me appeared \_\_\_\_\_,  
known to me (or satisfactorily proven) to be the person whose name appears above, and he/she  
subscribed his/her name to the foregoing document.

\_\_\_\_\_  
Notary Public/Justice of the Peace  
My commission expires:

ACCEPTED ON BEHALF OF STATE OF NEW HAMPSHIRE.

By: STATE OF NEW HAMPSHIRE  
DEPARTMENT OF ENVIRONMENTAL  
SERVICES

\_\_\_\_\_  
Michael J. Walls  
Assistant Commissioner

THE STATE OF NEW HAMPSHIRE \_\_\_\_\_, SS.

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me appeared \_\_\_\_\_,  
known to me (or satisfactorily proven) to be the person whose name appears above, and he/she  
subscribed his/her name to the foregoing document.

\_\_\_\_\_  
Notary Public/Justice of the Peace  
My commission expires:

**EXHIBIT A**

[Property Description]

**EXHIBIT B**

[Plan of Property]